

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1079**

**Introduced by Assembly Member Bermudez**

February 20, 2003

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An act to amend ~~Section 9882~~ *Sections 9880.1, 9882, 9882.5, and 9884.7* of the Business and Professions Code, relating to automotive repair.

LEGISLATIVE COUNSEL'S DIGEST

AB 1079, as amended, Bermudez. Automotive repair.

Existing law, the Automotive Repair Act, establishes a Bureau of Automotive Repair under the supervision and control of the Director of Consumer Affairs. The act provides for the registration and regulation of automotive repair dealers and authorizes the director to adopt regulations to implement its provisions. *Under the act, the director may take disciplinary action against an automotive repair dealer for specified acts of misconduct if the dealer cannot show a bona fide error; and the director may suggest measures to compensate for damages resulting from a violation of the act or adopted regulations.*

This bill would ~~correct an erroneous cross reference in these provisions~~ specify that the director's suggestions made regarding alleged violations is not a disciplinary action. The bill would require the bureau to adopt regulations categorizing violations of the act and its regulations and identifying a penalty, if any, for each violation category. The bill would define the terms "bona fide error," "customer," and "fraud" for purposes of the act. The bill would make related changes.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *Section 9880.1 of the Business and Professions*  
2     *Code is amended to read:*  
3     9880.1. The following terms as used in this chapter have the  
4     meaning expressed in this section.  
5     (a) “Automotive repair dealer” means a person who, for  
6     compensation, engages in the business of repairing or diagnosing  
7     malfunctions of motor vehicles.  
8     (b) “Chief” means the Chief of the Bureau of Automotive  
9     Repair.  
10    (c) “Bureau” means the Bureau of Automotive Repair.  
11    (d) “Motor vehicle” means a passenger vehicle required to be  
12    registered with the Department of Motor Vehicles and all  
13    motorcycles whether or not required to be registered by the  
14    Department of Motor Vehicles.  
15    (e) “Repair of motor vehicles” means all maintenance of and  
16    repairs to motor vehicles performed by an automotive repair dealer  
17    including automotive body repair work, but excluding those  
18    repairs made pursuant to a commercial business agreement and  
19    also excluding repairing tires, changing tires, lubricating vehicles,  
20    installing light bulbs, batteries, windshield wiper blades and other  
21    minor accessories, cleaning, adjusting, and replacing spark plugs,  
22    replacing fan belts, oil, and air filters, and other minor services,  
23    which the director, by regulation, determines are customarily  
24    performed by gasoline service stations.  
25    No service shall be designated as minor, for purposes of this  
26    section, if the director finds that performance of the service  
27    requires mechanical expertise, has given rise to a high incidence  
28    of fraud or deceptive practices, or involves a part of the vehicle  
29    essential to its safe operation.  
30    (f) “Person” includes firm, partnership, association, limited  
31    liability company, or corporation.  
32    (g) An “automotive technician” is an employee of an  
33    automotive repair dealer or is that dealer, if the employer or dealer  
34    repairs motor vehicles and who for salary or wage performs  
35    maintenance, diagnostics, repair, removal, or installation of any

1 integral component parts of an engine, driveline, chassis or body  
2 of any vehicle, but excluding repairing tires, changing tires,  
3 lubricating vehicles, installing light bulbs, batteries, windshield  
4 wiper blades, and other minor accessories; cleaning, replacing fan  
5 belts, oil and air filters; and other minor services which the  
6 director, by regulation, determines are customarily performed by  
7 a gasoline service station.

8 (h) "Director" means the Director of Consumer Affairs.

9 (i) "Commercial business agreement" means an agreement,  
10 whether in writing or oral, entered into between a business or  
11 commercial enterprise and an automobile repair dealer, prior to the  
12 repair which is requested being made, which agreement  
13 contemplates a continuing business arrangement under which the  
14 automobile repair dealer is to repair any vehicle covered by the  
15 agreement, but does not mean any warranty or extended service  
16 agreement normally given by an automobile repair facility to its  
17 customers.

18 (j) *"Bona fide error" means an error made in good faith*  
19 *without fraud or deceit.*

20 (k) *"Customer" means the owner of a motor vehicle or a person*  
21 *designated by the owner to authorize the repair of the owner's*  
22 *motor vehicle or to otherwise act on the owner's behalf.*

23 (l) *"Fraud" means a statement, act, or omission by an*  
24 *automobile repair dealer made in connection with the repair of a*  
25 *motor vehicle that is intended to deceive a customer for the*  
26 *dealer's material advantage.*

27 SEC. 2. Section 9882 of the Business and Professions Code is  
28 amended to read:

29 9882. (a) There is in the Department of Consumer Affairs a  
30 Bureau of Automotive Repair under the supervision and control of  
31 the director. The duty of enforcing and administering this chapter  
32 is vested in the chief who is responsible to the director. ~~The~~

33 (b) *The* director may adopt and enforce those rules and  
34 regulations that he or she determines are reasonably necessary to  
35 carry out the purposes of this chapter and declaring the policy of  
36 the bureau, including a system for the issuance of citations for  
37 violations of this chapter as specified in Section 125.9. ~~These~~

38 (c) *The bureau shall adopt regulations that classify a violation*  
39 *of this chapter and the regulations adopted under it. The*  
40 *classification system shall clearly distinguish technical violations*

1 *from material violations and shall identify the penalty, if any, for*  
2 *each type of violation. Consideration shall be given to a*  
3 *classification system that distinguishes between technical,*  
4 *negligent, and willful violations.*

5 (d) *The rules and regulations under this section shall be adopted*  
6 *pursuant to Chapter 3.5 (commencing with Section 11340) of Part*  
7 *1 of Division 3 of Title 2 of the Government Code.*

8 SEC. 3. *Section 9882.5 of the Business and Professions Code*  
9 *is amended to read:*

10 9882.5. The director shall on his or her own initiative or in  
11 response to complaints, investigate on a continuous basis and  
12 gather evidence of violations of this chapter and of any regulation  
13 adopted pursuant to this chapter, by any automotive repair dealer  
14 or automotive technician, whether registered or not, and by any  
15 employee, partner, officer, or member of any automotive repair  
16 dealer. The director shall establish procedures for accepting  
17 complaints from the public against any dealer or automotive  
18 technician. The director may suggest measures that, in the  
19 director's judgment, would compensate for any damages suffered  
20 as a result of an alleged violation. If the dealer accepts the  
21 suggestions and performs accordingly, such fact shall be given due  
22 consideration in any subsequent disciplinary proceeding. *Any*  
23 *suggestion made pursuant to this section shall not be deemed to be*  
24 *or characterized as a disciplinary action.*

25 SEC. 4. *Section 9884.7 of the Business and Professions Code*  
26 *is amended to read:*

27 9884.7. (a) The director, ~~where~~ *after affording the*  
28 *automotive repair dealer cannot show an opportunity to*  
29 *demonstrate there was a bona fide error and after finding no bona*  
30 *fide error occurred,* may refuse to validate, or may invalidate  
31 temporarily or permanently, the registration of an automotive  
32 repair dealer for any of the following acts or omissions related to  
33 the conduct of the business of the automotive repair dealer, which  
34 are done by the automotive repair dealer or any automotive  
35 technician, employee, partner, officer, or member of the  
36 automotive repair dealer:

37 (1) Making or authorizing in any manner or by any means  
38 whatever any statement written or oral, *made with the intent to*  
39 *deceive or gain advantage over a customer,* which statement is  
40 untrue or misleading, and which is known, or which by the

1 exercise of reasonable care should be known, to be untrue or  
2 misleading.

3 (2) Causing or allowing a customer to sign any work order  
4 ~~which~~ *that* does not state the repairs requested by the customer or  
5 the automobile's odometer reading at the time of repair.

6 (3) Failing or refusing to give to a customer a copy of any  
7 document requiring his or her signature, as soon as the customer  
8 signs the document.

9 (4) Any ~~other~~ conduct ~~which~~ *that* constitutes fraud.

10 (5) Conduct constituting gross negligence.

11 (6) ~~Failure~~ *Willful failure* in any material respect to comply  
12 with the provisions of this chapter or regulations adopted pursuant  
13 to it.

14 (7) Any willful departure from or disregard of accepted trade  
15 standards for good and workmanlike repair in any material respect,  
16 which is prejudicial to another without consent of the owner or his  
17 or her duly authorized representative.

18 (8) Making false promises of a character likely to influence,  
19 persuade, or induce a customer to authorize the repair, service, or  
20 maintenance of automobiles.

21 (9) Having repair work done by someone other than the dealer  
22 or his or her employees without the knowledge or consent of the  
23 customer unless the dealer can demonstrate that the customer  
24 could not reasonably have been notified.

25 (10) Conviction of a violation of Section 551 of the Penal Code.

26 (b) Upon refusal to validate a registration, the director shall  
27 notify the applicant thereof, in writing, by personal service or mail  
28 addressed to the address of the applicant set forth in the  
29 application, and the applicant shall be given a hearing under  
30 Section 9884.12 if, within 30 days thereafter, he or she files with  
31 the bureau a written request for hearing, otherwise the refusal is  
32 deemed affirmed.

33 ~~(b)~~

34 (c) Except as provided for in subdivision ~~(e)~~ (d), if an  
35 automotive repair dealer operates more than one place of business  
36 in this state, the director pursuant to subdivision (a) shall only  
37 refuse to validate, or shall only invalidate temporarily or  
38 permanently the registration of the specific place of business  
39 ~~which~~ *that* has violated any of the provisions of this chapter. This  
40 violation, or action by the director, shall not affect in any manner

1 the right of the automotive repair dealer to operate his or her other  
2 places of business.

3 ~~(e)~~

4 (d) Notwithstanding subdivision~~(b)~~ (c), the director may  
5 refuse to validate, or may invalidate temporarily or permanently,  
6 the registration for all places of business operated in this state by  
7 an automotive repair dealer upon a finding that the automotive  
8 repair dealer has, or is, engaged in a course of repeated and willful  
9 violations of this chapter, or regulations adopted pursuant to it.

